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AUG 28 2012
OFFICE OF PETITIONS

In re Application :
Bopardikar, et al. :
Application No. 09/608,521 : DECISION ON APPLICATION
Filed: June 30, 2008 : FOR PATENT TERM ADJUSTMENT
Atty Docket No. 3C0012/7000 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)", filed August 22, 2012. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one thousand three hundred ninety-two (1392) days to one thousand five hundred forty-seven (1547) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand four hundred sixteen (1416) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On July 26, 2012, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is one thousand three hundred ninety-two (1392) days. On August 22, 2012, Applicants timely¹ submitted the

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee. February 20, 2012 was timely because February 18, 2012 fell on a Saturday. See 37 CFR 1.7(a).

instant application for patent term adjustment.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of one thousand three hundred ninety-two (1392) days based on an adjustment of one thousand four hundred forty (1440) days of PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), plus twenty-eight (28) days of PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(2), plus seventy (70) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(4), reduced by thirty-one (31), twenty-six (26), thirty (30), and thirty-one (31) days of applicant delay pursuant to 37 C.F.R. §1.704(b), and twenty-six (26) days of applicant delay pursuant to 37 C.F.R. §1.704(c)(8).

First, a review of Applicant's first reply to the August 9, 2005 Office action reveals that Applicants were not assessed any period of delay. PAIR shows Applicants reply to have been filed on November 9, 2005. However, a review of the file reveals that the reply was in fact filed on November 14, 2005. As such, five (5) days of Applicant delay should have been assessed pursuant to 37 C.F.R. §1.704(b).

With regard to Applicants' reply filed on October 16, 2006, PAIR indicates that Applicants were improperly assessed thirty-one (31) days of Applicant delay pursuant to 37 C.F.R. §1.704(b). As the due date for the reply fell on a Sunday, and October 16, 2006 was the first succeeding business day, only thirty (30) days of Applicant delay should have been assessed.

In addition, a review of the file also reveals that Applicants were improperly assessed Applicant delay under 37 C.F.R. §1.704(c)(8) for filing an IDS on April 21, 2008, after Applicants filed a Notice of Appeal on March 26, 2008. This assessment of Applicant delay was incorrect - Applicants' filing of the Notice of Appeal stopped the clock for further accrual of Applicant delay.

Applicants also assert that they should have only been assessed Applicant delay of thirty (30) days for filing a Notice of Appeal on April 30, 2009. However, as the preceding Office action was mailed on December 30, 2008, a reply was due by March 30, 2009. The number of days from March 31, 2009 to April 30, 2009 is thirty-one (31) days, as correctly indicated in PAIR.

In addition, Applicants also assert that the Office should have

been accorded eighty-nine (89) days of PTO delay in mailing an Office action on November 27, 2009, not twenty-eight (28) days as shown in PAIR. Applicants filed a Notice of Appeal on April 30, 2009, and thereafter timely filed an Appeal Brief on June 30, 2009. Pursuant to 37 C.F.R. §1.703(a)4), the Office had four months, or until October 30, 2009, to mail an Examiner's Answer, an action under 35 U.S.C. 132, or a Notice of Allowance. The Office mailed an action under 35 U.S.C. 132 on November 27, 2009. Accordingly, the assessment of twenty-eight (28) days was correct.

A further review of the file reveals that Applicants were improperly assessed Applicant delay of two (2) days under 37 C.F.R. §1.704(b), for filing a reply to a November 27, 2009 Office action on March 1, 2010. As the due date for a reply fell on a Saturday, and Applicants filed their reply on the next succeeding business day, no days of Applicant delay should have been assessed.

Lastly, Applicants point out that they should have been assessed Applicant delay of thirty (30) days for filing an Appeal Brief on May 16, 2011, after a Notice of Appeal was filed on February 15, 2011. While the Office thanks Applicants for their candor, as pointed out above, the filing of a Notice of Appeal stops the clock for the accrual of further Applicant delay.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one thousand four hundred sixteen (1416) days** (1538 (1440+28+70) days of PTO delay, reduced by 122 (5+30+26+30+31) days of applicant delay).

Receipt of the \$200 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions

Enc: updated PAIR screen



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: _____

[Explanation of PTA Calculation](#)

[Explanation of PTE Calculation](#)

PTA Calculations for Application: **09608521**

Application Filing Date	06/30/2000	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	1538
A Delays	1538	PTO Manual Adjustment	24
B Delays	0	Applicant Delay (APPL)	146
C Delays	0	Total PTA (days)	1416

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
148	08/24/2012		P028	Adjustment of PTA Calculation by PTO	24	0	
138	07/26/2012	05/17/2012	MN/=	Mail Notice of Allowance	70	115	
137	07/23/2012		OAR	Office Action Review		0	
136	07/23/2012		OAR	Office Action Review		0	
135	07/23/2012		IREV	Issue Revision Completed		0	
132	07/18/2012		OAR	Office Action Review		0	
131	07/18/2012		ACRE	Allowed Case Returned to the Examiner for Clerical Processing		0	
128	07/17/2012		OAR	Office Action Review		0	
127	07/17/2012		ACRE	Allowed Case Returned to the Examiner for Clerical Processing		0	
126	07/17/2012		DVER	Document Verification		0	
125	07/17/2012		N/=	Notice of Allowance Data Verification Completed		0	
123	07/13/2012		CNTA	Allowability Notice		0	
116	03/13/2012		FWDX	Date Forwarded to Examiner		0	
114	01/23/2012		APBR	Appeal Brief Review Complete		0	
115	01/17/2012		AP.B	Appeal Brief Filed		0	
113	11/16/2011		N/AP	Notice of Appeal Filed		0	
112	08/16/2011		ELC_RVW	Electronic Review		0	
111	08/16/2011		EML_NTF	Email Notification		0	
110	08/16/2011	02/15/2011	MCTNF	Mail Non-Final Rejection		103	
109	08/11/2011		OAR	Office Action Review		0	
108	08/09/2011		CTNF	Non-Final Rejection		0	
107	05/23/2011		FWDX	Date Forwarded to Examiner		0	
105	05/20/2011		APBR	Appeal Brief Review Complete		0	
106	05/16/2011		AP.B	Appeal Brief Filed		0	
104	05/16/2011		XT/G	Request for Extension of Time - Granted		0	
103	02/15/2011		N/AP	Notice of Appeal Filed		0	
102	11/23/2010		PST_CRD	Mail Post Card		0	
101	11/15/2010		EML_NTF	Email Notification		0	
100	11/15/2010	07/27/2010	MCTNF	Mail Non-Final Rejection		94	
99	11/08/2010		CTNF	Non-Final Rejection		0	
98	10/07/2010		DOCK	Case Docketed to Examiner in GAU		0	
97	08/10/2010		FWDX	Date Forwarded to Examiner		0	
95	08/09/2010		APBR	Appeal Brief Review Complete		0	
96	07/27/2010		AP.B	Appeal Brief Filed		0	
94	07/27/2010		N/AP	Notice of Appeal Filed		0	
93	05/27/2010		ELC_RVW	Electronic Review		0	
92	05/26/2010		EML_NTF	Email Notification		0	
91	05/26/2010		MCTFR	Mail Final Rejection (PTOL - 326)		0	
90	05/24/2010		CTFR	Final Rejection		0	
85	05/11/2010		EML_NTR	Email Notification		0	
88	05/03/2010		MP003	Mail-Record Petition Decision of Granted to Make Special		0	
89	04/30/2010		LET.	Miscellaneous Incoming Letter		0	
87	04/30/2010		P003	Record Petition Decision of Granted to Make Special		0	
81	03/25/2010		FWDX	Date Forwarded to Examiner		0	
80	03/01/2010	02/27/2010	A...	Response after Non-Final Action		2	77
79	11/29/2009		ELC_RVW	Electronic Review		0	
78	11/27/2009		EML_NTF	Email Notification		0	
77	11/27/2009	10/30/2009	MCTNF	Mail Non-Final Rejection	28	73	
76	11/23/2009		CTNF	Non-Final Rejection		0	
75	07/27/2009		APBR	Appeal Brief Review Complete		0	
74	07/27/2009		FWDX	Date Forwarded to Examiner		0	
73	06/30/2009		AP.B	Appeal Brief Filed		0	
72	04/30/2009	03/30/2009	N/AP	Notice of Appeal Filed		31	70
71	04/30/2009		XT/G	Request for Extension of Time - Granted		0	

70	12/30/2008	MCTFR	Mail Final Rejection (PTOL - 326)	0
69	12/27/2008	CTFR	Final Rejection	0
68	10/29/2008	FWDX	Date Forwarded to Examiner	0
67	10/10/2008	09/10/2008 A...	Response after Non-Final Action	30 61
66	10/10/2008	XY/G	Request for Extension of Time - Granted	0
63	10/06/2008	DOCK	Case Docketed to Examiner in GAU	0
62	07/30/2008	CADB	Correspondence Address Change	0
61	06/10/2008	03/26/2008 MCTNF	Mail Non-Final Rejection	51
60	06/09/2008	CTNF	Non-Final Rejection	0
65	04/21/2008	RCAP	Reference capture on IDS	0
64	04/21/2008	03/26/2008 M844	Information Disclosure Statement (IDS) Filed	26 51
59	04/21/2008	IDSC	Information Disclosure Statement considered	0
58	04/21/2008	IDSC	Information Disclosure Statement considered	0
56	04/21/2008	WIDS	Information Disclosure Statement (IDS) Filed	0
54	03/31/2008	MAPCR	Mail Appeals conf. Reopen Prosec.	0
55	03/28/2008	FWDX	Date Forwarded to Examiner	0
53	03/28/2008	APCR	Pre-Appeals Conference Decision - Reopen Prosecution	0
52	03/26/2008	AP.C	Request for Pre-Appeal Conference Filed	0
51	03/26/2008	02/29/2008 N/AP	Notice of Appeal Filed	26 49
50	03/26/2008	XY/G	Request for Extension of Time - Granted	0
49	11/30/2007	MCTFR	Mail Final Rejection (PTOL - 326)	0
48	11/30/2007	CTFR	Final Rejection	0
47	10/04/2007	FWDX	Date Forwarded to Examiner	0
46	09/26/2007	A...	Response after Non-Final Action	0
45	09/25/2007	CAD	Correspondence Address Change	0
44	09/25/2007	PA...	Change in Power of Attorney (May Include Associate POA)	0
43	06/28/2007	MCTNF	Mail Non-Final Rejection	0
42	06/23/2007	CTNF	Non-Final Rejection	0
39	04/05/2007	FWDX	Date Forwarded to Examiner	0
37	04/05/2007	FWDX	Date Forwarded to Examiner	0
35	04/05/2007	PA...	Disposal for a RCE / CPA / R129	0
38	04/03/2007	ISB	Amendment Submitted/Entered with Filing of CPA/RCE	0
36	04/03/2007	RCEX	Request for Continued Examination (RCE)	0
34	04/03/2007	BRCE	Workflow - Request for RCE - Begin	0
33	01/03/2007	MCTFR	Mail Final Rejection (PTOL - 326)	0
32	12/23/2006	CTFR	Final Rejection	0
31	10/18/2006	FWDX	Date Forwarded to Examiner	0
30	10/16/2006	09/15/2006 A...	Response after Non-Final Action	21 27
29	10/16/2006	XY/G	Request for Extension of Time - Granted	0
28	08/29/2006	CADB	Correspondence Address Change	0
27	06/15/2006	MCTNF	Mail Non-Final Rejection	0
26	06/12/2006	CTNF	Non-Final Rejection	0
25	03/28/2006	FWDX	Date Forwarded to Examiner	0
24	03/20/2006	ELC	Response to Election / Restriction Filed	0
23	02/23/2006	MCTRS	Mail Restriction Requirement	0
22	02/17/2006	CTRS	Restriction/Election Requirement	0
21	12/07/2005	FWDX	Date Forwarded to Examiner	0
20	11/09/2005	A...	Response after Non-Final Action	0
19	08/09/2005	08/30/2001 MCTNF	Mail Non-Final Rejection	1440 0.5
18	08/06/2005	CTNF	Non-Final Rejection	0
17	03/29/2005	DOCK	Case Docketed to Examiner in GAU	0
16	10/06/2004	DOCK	Case Docketed to Examiner in GAU	0
15	06/04/2004	LET	Miscellaneous Incoming Letter	0
14	05/13/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
13	07/21/2003	DOCK	Case Docketed to Examiner in GAU	0
11	11/12/2002	DOCK	Case Docketed to Examiner in GAU	0
10	10/04/2002	DOCK	Case Docketed to Examiner in GAU	0
133	04/15/2002	IDSC	Information Disclosure Statement considered	0
130	04/15/2002	WIDS	Information Disclosure Statement (IDS) Filed	0
41	04/15/2002	IDSC	Information Disclosure Statement considered	0
40	04/15/2002	WIDS	Information Disclosure Statement (IDS) Filed	0
86	05/10/2001	PET	Petition Entered	0
7	02/13/2001	DOCK	Case Docketed to Examiner in GAU	0
6	01/22/2001	OIPE	Application Dispatched from OIPE	0
5	01/04/2001	COMP	Application Is Now Complete	0
4	08/23/2000	INCC	Notice Mailed--Application Incomplete--Filing Date Assigned	0
3	08/23/2000	CAD	Correspondence Address Change	0
2	07/25/2000	SCAN	IFW Scan & PACR Auto Security Review	0
134	07/19/2000	IDSC	Information Disclosure Statement considered	0
129	07/19/2000	WIDS	Information Disclosure Statement (IDS) Filed	0
124	07/19/2000	RCAP	Reference capture on IDS	0
8.7	07/19/2000	M844	Information Disclosure Statement (IDS) Filed	0
8	07/19/2000	WIDS	Information Disclosure Statement (IDS) Filed	0
1	06/30/2000	IEXX	Initial Exam Team nn	0
0.5	06/30/2000	EFILE	Filing date	0

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